

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, D.C. 20007-5108**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

STEVEN A. AUGUSTINO

DIRECT LINE: (202) 342-8612

EMAIL: saugustino@kelleydrye.com

NEW YORK, NY  
LOS ANGELES, CA  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ  
BRUSSELS, BELGIUM

AFFILIATE OFFICES  
MUMBAI, INDIA

January 26, 2012

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Supplemental Ex Parte Filing in CG Docket No. 11-50  
Dish Network, LLC Petition for Declaratory Ruling  
Concerning the Telephone Consumer Protection Act ("TCPA")

Dear Ms. Dortch:

We represent DISH Network, LLC ("DISH") in the above referenced matter. We write in response to Mr. Michael Blume's letter dated January 19, 2012 regarding *Mims v. Arrow Fin. Services, LLC*, No. 10-1195, 2012 WL 125429 (U.S. Jan. 18, 2012). While *Mims* invoked the Telephone Consumer Protection Act ("TCPA"), the decision provides no support for the DOJ's proposition that sellers, such as DISH, are strictly liable for third-party TCPA violators. *Mims* addressed the narrow question of "whether Congress' provision for private actions to enforce the TCPA renders state courts the *exclusive* arbiters of such action." *Id.* at \*3. There is no basis for the DOJ's unsupported extrapolation of Justice Ginsburg's opinion.

Justice Ginsburg's opinion addressed only the federal authority granting federal courts jurisdiction over claims arising from the TCPA. The Court held merely that "[w]e find no convincing reasons to read into the TCPA's permissive grant of jurisdiction to state courts any barrier to the U.S. district court's exercise of the general federal-question jurisdiction they have possessed since 1875." *Id.*

The Court also correctly pointed out that Congress "enacted detailed, uniform, federal substantive prescriptions and provided for a regulatory regime administered by a federal agency." *Id.* at \*9. This statement underscores that it is only appropriate to use the federal common law of agency under the TCPA to support the federal interest in regulating

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telemarketers and individual privacy. Nothing in *Mims* supports the DOJ's proposal for the Commission to create, out of whole-cloth, an entirely new standard of liability that will be subject to years of litigation to resolve, and is unlikely to yield uniform and consistent results that courts and the Commission can easily apply.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is fluid and cursive, with the first name "Steven" and last name "Augustino" clearly legible.

Steven A. Augustino

*Counsel to DISH Network, LLC*

SAA:pab